IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1381 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MULJIBHAI PATEL UROLOGICAL HOSPITAL - Petitioner(s)
Versus
CHATURBHAI N. HARIJAN & ORS. - Respondent(s)

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Appearance :
Shri Paritosh Calla for Petitioner(s).
Shri Y. V. Brahmbhatt for Respondent Nos.1 and 3A to 3D.
None for Respondent No. 2 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

The employer, being aggrieved by the award dated 6th

October, 1995 passed by the learned Labour Court, Nadiad in Reference (LCN) No.357 of 1993, is before this Court with a submission that the learned Court below was absolutely unjustified in directing reinstatement of the workmen with 60% back-wages.

2. The short facts necessary for disposal of the present Writ Application are that the present petitioner is a charitable institution, which is running a hospital. For conducting smooth work, it had employed some Class-IV employees. Much before the present matter came before the Court, the parties entered into a settlement that so long as the settlement continues in existence, the Class-IV employees would not proceed on strike taking into consideration that the Establishment is a charitable institution. However, the Class-IV employees went on a strike on 7th November, 1992 and continued to abstain from work upto 16th November, 1992. On 14th November, 1992, some show cause notices were issued to the workmen to resume duties. Most of the employees came and joined the work on 17th November, 1992, but, the respondents, it appears from the claim, were not asked to join the duties. However, they were issued charge-sheets on the ground that they instigated other workers and they were authors of the strike, therefore, why they be not terminated from the services. It would also be worth noting that the persons, who joined back the duties on 17th November, 1992, gave to the management in writing that they never wanted to proceed on strike, but,

the present three respondents did not allow them to join the work. After conducting the inquiry, the Inquiry Officer/Disciplinary Officer recorded the finding that the three respondents were authors of the strike, they instigated the workers to proceed on strike and they did not allow the said workers to join/resume the duties; they were, accordingly, ordered to be terminated. Being aggrieved by the said termination, the respondents-workmen came to the learned Labour Court, they submitted that they were discriminated, other workmen were allowed to resume duties and no action was taken against others and as the three respondents, as a unit, were singled out and terminated, they were entitled to be reinstated with back-wages.

2.1 The petitioner-Establishment appeared before the learned Labour Court and submitted that the inquiry proceedings were conducted in accordance with law, the principles of natural justice were observed, there were no legal flaws in the inquiry and under the circumstances, the learned Labour Court was not required to interfere in the disciplinary proceedings or was not required to interfere with the quantum of punishment.

2.2 It is to be noted that even after the notices, the workmen did not take part in the departmental inquiry, the departmental proceedings

proceeded *ex parte* and the order of termination came to be made. Though in the claim petition, the correctness, validity and propriety of the departmental inquiry was challenged, but, however, at a later stage, the workmen gave up their challenge and accepted that the departmental inquiry was in accordance with law.

2.3 The learned Labour Court, after recording that it was not required to discuss about the legality of the departmental inquiry as legality of the departmental inquiry was accepted by the workmen, held the departmental inquiry to be valid, further held that the three workmen were awarded illegal punishment, their dismissal/removal was discriminatory, accordingly directed reinstatement of the workmen with 60% back-wages.

3. Shri Paritosh Calla, learned Counsel for the petitioner, submitted that the Inquiry Officer has recorded a finding that the respondents instigated other workers and did not allow them to join the work. According to him, if some action is taken against the workmen or the persons, who were guilty of grave misconduct, then, such an action could not be set aside by the learned Court below on the ground of discrimination. He also submitted that award of 60% back-wages, in the set of circumstances, is illegal and bad.

4. Shri Y.V. Brahmbhatt, learned Counsel for the respondents-workmen, however, submitted that the workmen had only accepted before the learned Labour Court that there were no procedural lapses in the departmental inquiry, but, the workmen did never accept the findings recorded in the departmental inquiry. When I suggested that if it is the case of the workmen that the learned Court below did not consider their case in its true perspective, then, why the matter be not sent back to the learned Court for a decision on the issue that whether the findings recorded in the departmental inquiry were legal or not, Shri Brahmbhatt submitted that this Court, instead of sending the matter back to the learned Labour Court, should decide the matter here itself. When the Court asked Shri Brahmbhatt, learned Counsel for the respondents, that in the set of circumstances, when the allegations of proceeding on illegal strike are proved, why the learned Labour Court has interfered in the matter on the ground of discrimination and why the back-wages even to the extent of 60% were required to be paid by the employer, Shri Brahmbhatt, learned Counsel for the respondents, submitted that the award made by the learned Labour Court does not call for any interference.

5. From the award made by the learned Labour Court, it would clearly appear that it did not enter into the question of legality, validity

and propriety of the *ex parte* inquiry. Even before me, the legality, validity and propriety of the inquiry is not under challenge.

6. The learned Court below has held that the order of termination was amounting to discrimination between the set of persons, who were standing on the same pedestal. The learned Court has observed that barring those three, if all others were allowed to resume the duties, then, present would become a case of discrimination and non-exercise of discretion. The learned Labour Court nowhere said that the inquiry was illegal, however, the learned Court had observed that before recording a finding that the strike was illegal, a declaration from the competent Court was required to be obtained.

7. In view of the settlement term No.17, read with term No.19, it would be clear that it was for the department to hold and decide that whether there was an illegal strike or not. Undisputedly, all Class-IV employees were not available on work for the period between 7th November, 1992 and 16th November, 1992. Such mass absence would certainly lead to the only presumption that everybody was abstaining from work and/or was proceeding on strike. If this was the conduct of all concerned, then, they were committing breach of the settlement term No.17 and exposing themselves to term No.19. However, it is to be noted

that except the respondents if all others have been reinstated, then, the respondents were required to be treated equally. The learned Court below was justified in directing reinstatement.

8. Taking into consideration the totality of the circumstances and the fact that some evidence has come on record that the respondents instigated others, I am of the considered opinion that looking to the acts of the respondents-workmen, they were not entitled to 60% back-wages. In the opinion of this Court, the ends of justice would meet if 30% back-wages are awarded in favour of the workmen from the date of removal till the date of award made by the learned Court below. On the question of reinstatement, I refuse to interfere, but, however, the back-wages are reduced from 60% to 30%.

9. The petition is disposed of accordingly. Rule is made absolute. No costs.

[R.S.Garg, J.]

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